



POLICE DEPARTMENT

October 25, 2019

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In the Matter of the Charges and Specifications : Case No.
- against - : 2018-19845
Police Officer Lazo Lluka :
Tax Registry No. 943493 :
72 Precinct :

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:
HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Lazo Lluka, while assigned to the 71st Precinct, on or about December 12, 2017, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer wrongfully made misleading, inaccurate, or incomplete statements during a Department trial.

P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct
General Regulations

2. Said Police Officer Lazo Lluka, while assigned to the 72nd Precinct, on or about December 13, 2018, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer wrongfully made evasive, misleading, or inaccurate statements during an official Department interview.

P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct
General Regulations

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on September 24, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Christopher Friscia as a witness, and introduced into evidence recordings of Respondent's two Department interviews as well as a transcript of his witness testimony from a prior trial. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After considering the evidence, I find Respondent not guilty.

ANALYSIS

On March 9, 2016, Respondent was called to the vicinity of Location A to assist in the arrest of Person A for smoking marijuana outside his home. At the location, Person A stated that he may have left the stove on inside his residence; no action was taken by the police officers at the scene with respect to the stove. Respondent, who was not the arresting officer and was only at Location A for a couple of minutes, transported Person A to the

precinct. Sometime later, while Person A was still at the stationhouse, news came that there had been a fire inside the Location A home, where Person A's mother, [REDACTED] [REDACTED] was present. His mother was removed, but Person A, in anger, threw a phone and damaged the screen on the precinct's fingerprinting machine; Person A was charged with criminal mischief for his actions.

Respondent was questioned about the incident in a Department interview on September 19, 2016. Charges and specifications were brought against several MOS, including Respondent, for their failure to take action at Location A with respect to the stove. On December 12, 2017, Respondent pled guilty to the charges against him (see Department Ex. 4), and agreed to forfeit ten (10) vacation days; that plea has yet to be approved by the Police Commissioner. That same day, the case against the co-respondents was on trial, and defense counsel called Respondent as a witness. It is alleged that Respondent wrongfully provided misleading testimony at that trial on the issue of what he heard Person A say about the stove while they were still at Location A.

After that trial, Respondent was brought in for a second Department interview on December 13, 2018. Respondent was questioned concerning his trial testimony. It is alleged that at that interview, Respondent gave evasive answers to the questions.

A recording of Respondent's initial Department interview, and the accompanying transcript, were admitted into evidence. (Dept. Ex. 2, 2A) When questioned whether Person A had made any statements about his mother [REDACTED] Respondent answered, "No, not to me." Later in that interview Respondent was asked whether Person A had mentioned to anyone that he might have left the stove on in his house; Respondent stated, "On the scene he did mention it once, but his demeanor wasn't urgent." Respondent added that Person A may have been making that statement to a friend who was with him. When asked whether Person A made any more

mention of this when they got back to the command, Respondent answered, "No, not to me." Respondent also stated that later on, a call came over the radio regarding a fire at the Location A address, which is how Respondent became aware of it. (Dept. Ex. 2A at 7-8, 14)

A transcript from the 2017 trial where Respondent testified as a witness was introduced as Dept. Ex. 1. The most relevant portion of Respondent's testimony occurred early in defense counsel's questioning:

- Q. And during the course of the questioning, the Internal Affairs investigator asked you a question about Person A allegedly telling police that his mother was inside the house [REDACTED] do you remember that?
- A. No, I don't remember that.
- Q. Okay. What about a question where you were asked whether or not the stove was on; do you remember that?
- A. Um, back at the precinct, yes.
- Q. Back at the precinct?
- A. Yes.

Respondent then was handed a transcript of his first Department interview, where he stated that the comment about the stove occurred at the scene. Respondent stated that he could not recall the facts of the Department interview, but based on the transcript, when he said the discussion occurred at the "scene" he must have been referring to the criminal mischief scene at the precinct where Person A damaged the fingerprinting machine. (Dept. Ex. 1 at 218-21)

A recording of Respondent's second Department interview, and the accompanying transcript, were admitted into evidence (Dept. Ex. 3, 3A). In that interview, Respondent was confronted with an alleged inconsistency between his initial Department interview and his testimony at the 2017 trial on the issue of when he heard Person A complain about the stove being on: in his initial Department interview, Respondent stated that Person A only made that remark

while still at Location A, whereas in his trial testimony he maintained that he instead heard the comment back at the precinct. Respondent repeatedly tried to explain that when he was being questioned at trial about the stove being left on, he thought the attorney was asking when it was that he became aware that there was a woman [REDACTED] inside with the stove on, a fact he only learned afterward when news of the fire reached the precinct. According to Respondent, that was why he responded the way he did: his whole answer to counsel's questions at the trial "was all about the mom. I had that in my head." The lead questioner, meanwhile, continued to reject that explanation, insisting, "Listen, these are two separate questions, we can't mush them all together. This is, it's right here in black and white." (Dept. Ex. 3A at 6-16, 26, 32-38, 45-48, 53-58)

Respondent testified that while he was at Location A, he did hear Person A say that he may have left the stove on. Person A did not, however, make any mention that he had a mother [REDACTED] inside. After Person A was brought to the precinct, Respondent attended to his own prisoner on an unrelated case. Sometime later, as he was preparing to fingerprint his prisoner, Respondent learned that the fingerprinting machine was broken by Person A after he learned that a fire had broken out at his home because the stove had been left on with his mother inside; this was the first time Respondent became aware that Person A's mother was in the home. (Tr. 51-57)

Respondent testified that on the same day he pled guilty for his failure to take action on the date of the incident, he was called as a witness by counsel for the two remaining co respondents. Counsel questioned Respondent about Location A, asking if he recalled investigators questioning him as to whether Person A had told the officers that he had a mother [REDACTED] inside, which Respondent believed was the focus of the inquiry. After Respondent answered no, Counsel asked follow-up questions about Person A stating that the

stove was on. Respondent believed that counsel was still referring to the issue of when it was that Person A mentioned that he had a mother [REDACTED] inside the home with the stove on, which was back at the precinct after receiving news of the fire, and Respondent answered accordingly. Respondent insisted he was answering as truthfully as he could, based on his recollection of the incident. (Tr. 60-63)

Respondent described the second Department interview as a "confusing scene," with a lot of jumping back-and-forth between time frames, and frequent arguing between one of the questioners and Respondent's counsel. Respondent testified that he tried to explain to the questioners that when he testified he believed the focus was on Person A's mother, which was the most serious issue connected to this matter. Respondent also noted that [REDACTED] [REDACTED], which is why it was important for him to make clear that he would not have departed from Location A if he had known that a woman [REDACTED] was being left alone inside a home with a stove on. (Tr. 66-70)

Specification 1 charges Respondent with wrongfully making misleading, inaccurate, or incomplete statements during the Department trial of his co-respondents on December 12, 2017. Respondent argues that the answers he provided were made in good faith, and that he had no intention to deceive. I found Respondent to be forthright and consistent as a witness at the present trial, and I credit his explanation.

The Department Advocate argues that Respondent's testimony, that he first heard about the stove back at the precinct, was deliberately inconsistent with his initial Department interview where he stated that he heard Person A mention the stove outside his house. That argument does not make sense in light of Respondent's guilty plea to the charges against him moments before his trial testimony. It is implausible that Respondent then took the witness stand and proceeded to intentionally misstate what he heard Person A say at Location A. Respondent already had

admitted he was guilty of hearing Person A's comment at Location A and failing to take action, and had agreed to forfeit 10 vacation days as a penalty.

Rather, it is more likely than not that Respondent's explanation that there was a misunderstanding is correct: when he was called as a witness, he believed the focus was on the issue of whether the officers departed from Location A despite knowing that there was a woman [REDACTED] left inside with the stove on. When counsel for the co-respondents began his line of questioning by asking Respondent if he was aware of the mother's presence inside the home, that question reasonably reinforced in Respondent's mind that the focal point was on whether the officers knowingly left the woman behind, and he answered accordingly.

When they arrived back at the precinct, Person A made no further mention that he may have left the stove on, and Respondent remained unaware that Person A's mother was inside the home; it was not until much later, after the fire was discovered, that Respondent first learned that the woman [REDACTED] had been left inside the home with the stove on, which is the first time it was mentioned by Person A. When he testified as a witness at the trial of the co-respondents, Respondent referred to this point in time as the second "scene," since that is when Person A damaged the fingerprinting machine.

To be sure, this situation might have been avoided with more precise questioning. As it was, any seemingly inconsistent responses by Respondent were inadvertent, based on a misapprehension of what the questioner was asking about, and did not constitute misconduct. Accordingly, I find Respondent not guilty of Specification 1.

Specification 2 charges Respondent with wrongfully making evasive, misleading, or inaccurate statements during his second Department interview on December 13, 2018. Having listened carefully to the recording of that interview, I do not find any misconduct in Respondent's answers.

During that interview, which took place one year after Respondent's trial testimony, and more than two-and-one-half years after the underlying incident, Respondent appears to make a good faith effort to explain that at trial he "was continuing answering [REDACTED] question." He states that after trial counsel initially questioned him about the mother [REDACTED] that is what he "had in his head," and his subsequent answer "was all about the mom." As the interview proceeds, the primary questioner repeatedly refers Respondent back to the transcript of his trial testimony; Respondent tries to clarify that "the question seems clear on paper, but I – when I was explaining it, when I was giving the answers, I was my mind was on the mom [REDACTED]

[REDACTED]' Before he can explain further, the questioner interjects, "I don't understand why you keep going back to the [REDACTED]" (Dept. Ex. 3A at 58) There also is extensive bickering between the questioner and Respondent's counsel. As discussed in Specification 1, above, through all the confusion Respondent does offer a credible explanation for the alleged discrepancy between his first Department interview and his trial testimony.

The Department Advocate suggests additional specific areas where he believes Respondent was evasive in his answers at the second Department interview. For example, the Advocate argues that Respondent was being evasive when he repeatedly interjected that he would not have left Location A if he knew there was a woman [REDACTED] inside with a stove on. However, as discussed above, that was a significant piece of information in Respondent's mind that he believed was directly connected to the inquiry; there was nothing evasive in such comments. The Advocate also contends that Respondent was being evasive when he vacillated as to how he learned of Person A's statements at the precinct: at one point Respondent suggested he heard the comments directly from Person A, but later stated that in the commotion of what occurred after the machine was broken he may have overheard someone else at the precinct talking about it. After listening carefully to the recording of the interview, I am

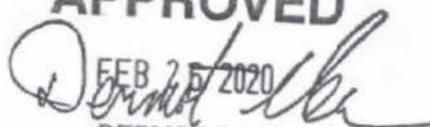
not persuaded that Respondent's answers were indicative of anything more than some uncertainty regarding a portion of a chaotic incident that had occurred more than two-and-a-half years earlier.

Taken as a whole, the credible evidence has failed to establish any misconduct on the part of Respondent during the second Department interview. Accordingly, I find Respondent not guilty of Specification 2.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

FEB 25 2020
DERMOT SHEA
POLICE COMMISSIONER